

**REMARKS/ARGUMENTS**

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Claims 19, 23, 24, 27, 29, 30, 33 and 37-41 remain in this application. Claims 1-5, 9-11, 15, 17-18, 22, 25-26 and 35-36 have been cancelled without prejudice to any future or pending application covering the same or similar subject matter. Claim 37-41 are new and introduce no new matter to this application. No new matter has been added to this application by way of any of the foregoing amendments.

**Claim Rejections Under 35 U.S.C. § 102**

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In the paragraph three of the Office Action, the Examiner rejects Claims 1-2, 4-5, 9, 11, 15, 18, 27-28, 30, 33, and 35-36 under 35 U.S.C. § 102(e) as being anticipated by Diamond, Jr. (U.S. Patent No. 6,231,487).

In response, Claims 1-2, 4-5, 9, 11, 15, 18, and 35-36 have been cancelled thereby rendering rejection moot. Independent Claim 1 has been represented as Independent Claim 37. Accordingly, in anticipation of a similar rejection, Applicants have submitted the following response in order to the advance the prosecution of the presently pending application.

With respect to Claim 37, the Applicant respectfully submits that the rejection be withdrawn because a *prima facie* case for anticipation has not been satisfied. More specifically, the Applicant submits that Diamond does not teach at least one upper grasping portion that is positionable in front of a user and configured to be held by the user's hands and further so shaped and configured in size to be engaged by a user's

chest. Furthermore, Diamond fails to disclose an upper thigh engagement member. Rather, Diamond teaches a base member that is placed at the back of the thighs not the upper thigh. Lastly, Diamond fails to teach an abdominal exercise machine wherein the user can position the machine in front during use and be held between a user's upper thigh portions and chest area so as to provide resistance during a stomach crunch motion and yet still provide visual cuing during use so that the user can view the degree of flexing of the elongated member. Rather, the device disclosed in Diamond is used in a manner such that the user's ankles are locked between the elements (16-A, 16-B) and the base member is 18 is placed at the back of the user's thighs. Thus, the user uses this device while lying down. In contrast, the abdominal device of Claim 37 may be used by a user in a standing or sitting position.

Because Diamond fails to teach all the elements recited in Claim 37, applicants respectfully submit that the rejection of the invention as presently claimed and request withdrawal of the rejection. Accordingly, Applicant respectfully requests the allowance of Claim 37 and Claims 28, 30, 33, and 38-42 which variously depend from Claim 37.

In paragraph four of the Office Action, the Examiner rejects Claims 1-3, 5, 9-10, 15, 17, 19, and 23-25 under 35 U.S.C. § 102(b) as being anticipated by Abdo (U.S. Patent No. 6,022,303).

In response, Applicant submits that the rejection is moot with respect to Claims 1-3, 5, 9-10, 15, and 17 as these claims have been cancelled thereby rendering the rejection moot. In order to further prosecution of the case, the Applicant submits the

following arguments with respect to Claim 37, which is Claim 1 represented. The Applicant submits that Abdo fails to anticipate the presently claimed invention.

More specifically, the Applicant submits that Abdo fails to teach an abdominal exercise machine wherein the upper grasping portion is positionable in front of the user and is configured so as to be held by at least the user's hands and is further shaped and configured in size to be engaged by a user's chest. Furthermore, Abdo fails to disclose an elongate flexible member that is positionable in front of a user. Furthermore, Abdo fails to teach an upper thigh engagement member that is shaped, sized and configured to rest comfortably on a user's upper thighs in a standing, sitting or lying position. Lastly, the abdominal device as disclosed in Claim 37 is positioned in front of a user during use and is held between a user's upper thigh portions and chest area so as to provide resistance during a stomach crunch and yet provide visual cuing during uses so the user may view the degree of flexing of the elongated member during use.

In sharp contrast, the Abdo reference teaches an abdominal exercise device wherein the user sits on a base member and the flexible member is positioned behind the user. The device is only usable when the user sits on the device whereas the device disclosed in Claim 37 may be used in a standing or lying position. Furthermore, the device disclosed in Abdo does not provide visual cuing during use so that the user can view the degree of flexing of the elongated member during a stomach crunch motion.

Accordingly, the Applicant requests that the rejection be withdrawn as a *prima facie* case for anticipation has not been satisfied. Thus, Applicant respectfully requests

that Claim 37 and Claims 19 and 22-25 variously depend from Claim 37 also be allowed.

**Claim Rejections Under 35 U.S.C. §103**

In the paragraph six of the Office Action, the Examiner rejected Claim 29 under 35 U.S.C. 103(a) as being unpatentable over Diamond.

In light of at least the above arguments and in light of the dependency of Claim 29 to independent Claim 27, Applicant submits that the pending Claim 29 is not obvious over Diamond. Moreover, this dependent claim further recites and defines the present invention and thus is independently patentable. Accordingly, Applicant requests the allowance of Claim 29.

In paragraph seven of the Office Action, the Examiner rejected Claims 22 and 26 under 35 U.S.C. 103(a) as being unpatentable over Abdo. Claims 22 and 26 have been cancelled thereby rendering rejection moot. Accordingly, Applicant requests that the rejection be withdrawn.

**CONCLUSION**

Having responded to each of the Examiner's concerns, Applicant asserts that the application is now in condition for allowance and solicits such action. If a telephone interview will advance the allowance of the application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant requests the Examiner contact Applicant's representative at the number listed below.

Application No. 09/923,469  
Amendment dated May 7, 2004  
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It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's attorney's deposit account no. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

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Enclosures

Certificate of First Class Mailing  
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